IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7364 OF 2004

Mrs.Malinder Kaur Paul Petitioner

versus

State of Maharashtra & others Respondents

D.M.Gupte, adv. for petitioner.
R.D.Rane, Additional G.P. for R.1 and 2.
S.V.Pitre, adv. for R.3 and 4.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 29th October 2004

PC :

1. By this petition under Article 226 of Constitution of India, petitioner challenges the order dated 24th February 2003 passed by the Caste Scrutiny Committee, Pune invalidating and rejecting her claim to "Chamar" Scheduled Caste. Consequently, caste certificate issued in favour of petitioner by competent authority is cancelled.

2. Petitioner submits that she was employed as Assistant Teacher at Military Farm Primary School, Kirkee, Pune on the basis that she belongs to Scheduled Caste (Sikh Chamar). She

was appointed in a vacancy of Scheduled Tribe category. Her appointment in the said school is of the year 1986. She submits that she is qualified and eligible for appointment as she possessed requisite educational qualifications. Petitioner also forwarded her school leaving certificate and caste certificate issued in her favour demonstrating her caste as above. It is her case that similar caste certificates were issued in favour of her brother and daughter of her brother.

3. It is contended that the petitioner satisfied the employer about genuineness of caste claim. It is contended that school authorities independently satisfied themselves about the petitioner's caste. It is contended that the caste "Sikh Chamar" is recognised as Scheduled Caste in the State of Maharashtra. It is contended that the appointment of petitioner on ad-hoc basis was regularised in June 1986. Petitioner was made permanent as Assistant Teacher. She also came to be transferred to another school. Petitioner continues as a permanent Teacher with respondent no.4. However, it is her grievance that respondent no.4 issued a letter to respondent no.2 for verification of caste claim. This was done belatedly and with

ulterior motives. Respondent no.2 directed the petitioner to appear before it and produce necessary materials. Petitioner pointed out to the Committee that she was student of Military Farm School, Kirkee where she has been now teaching. She produced school leaving certificate which showed her caste as "Sikh Chamar". She produced other materials to substantiate her caste claim. However, it appears that the Scrutiny Committee rejected her caste claim. Petitioner challenged that order before this Court. That order of Scrutiny Committee (21st October 1999) was set aside and matter was remanded to Scrutiny Committee by this Court for fresh scrutiny and verification in accordance with law. Upon remand, impugned order has been passed.

4. It is the grievance of petitioner that based upon the impugned order, the employer (respondent no.4) issued a notice calling upon the petitioner to show cause as to why her services should not be terminated. The show cause notice has been replied. However, it is the grievance of the petitioner that without giving opportunity to her to challenge findings of the Scrutiny Committee, hurriedly her services have been dispensed with and terminated by respondent no.4 with effect

from 1st April 2003. The termination order is based upon the impugned order of the Caste Scrutiny Committee.

5. Initially, it appears that the petitioner challenged the termination order in an appeal before School Tribunal. The School Tribunal entertained the appeal and issued an interim order protecting petitioner's services. However, it is her grievance that she was not reinstated in service despite interim order. Later on, petitioner was advised that School Tribunal is not the appropriate forum to challenge the order of Caste Scrutiny Committee. Thereupon, present petition under Article 226 of Constitution of India has been filed.

6. We have heard Mr.Gupte, learned counsel appearing for petitioner, Mr.Rane - Additional Government Pleader appearing for respondents 1 and 2 and Mr.Pitre for respondent nos.3 and 4. We have also perused the affidavit filed by Member Secretary/Research Officer, Caste Certificate Verification Committee, Pune.

7. The Scrutiny Committee proceeds on the basis that "Chamar" caste is shown as Scheduled Caste and the petitioner claims to be "Sikh Chamar".

In other words, there is no entry like "Sikh Chamar", and, therefore, the claim of petitioner has been rightly rejected.

8. It appears that in the caste column of the school register of real brothers of petitioner, word "Sikh" is mentioned. The Committee proceeds on the basis that petitioner cannot get any benefit of the entry "Chamar" on account of her belonging to "Sikh" religion. The view of Committee is that "Sikh Chamar" is not recognised as Scheduled Caste under the Constitutional (Scheduled Caste) Order, 1950.

9. In our view, this conclusion of the Scrutiny Committee cannot be sustained. It has been clarified by Government of India that the entries of castes in the Scheduled Castes' and Scheduled Tribes' Order are for the benefit of persons belonging to Hindu and Sikh religions. The reason for this clarification is obvious. Hindu and Sikh religions have recognised the caste system. Therefore, it will not be proper to deny to the petitioner benefit of entry "Chamar" on account of her belonging to "Sikh" religion.

10. In our view, it will not be fair, just and proper to deny an opportunity to the petitioner

to prove her caste claim. Moreso, when she has averred in the writ petition that caste certificate as well as certificate of validity has been issued in favour of her close relatives. In view thereof, the matter will have to be remitted back to the Scrutiny Committee for giving fresh opportunity to the petitioner to prove her caste claim.

11. Mr.Pitre, learned counsel appearing for respondents 3 and 4, however, contends that the petitioner has moved this Court belatedly. The position today is that her services have been terminated. The strength of students for the academic year 2003-2004 was reduced by the Management from 397 to 350. On account of such reduction, Education Department granted approval to seven divisions and eight teachers including Headmistress. The contention is that even if petitioner succeeds before the caste scrutiny committee, she cannot be reinstated by respondents 3 and 4. It is further contended by Mr.Pitre that petitioner being junior most teacher, will be rendered surplus and she will have to be absorbed in another aided school. It is not disputed that respondent no.4 is an aided school receiving Grant-in-Aid from the Education Officer (Primary), Zilla Parishad, Pune.

12. In our view, once the order of scrutiny committee in this case has been set aside and the matter is remitted for fresh consideration, it will not be proper to deny to the petitioner relief of reinstatement in service. The order of termination of her service is based upon the decision of scrutiny committee. Once that decision has been quashed and set aside, naturally, termination order based thereon will also have to be set aside. Therefore, it will not be proper to deny to the petitioner the normal relief of reinstatement. Moreso, when petitioner is in service for Seventeen (17) years. In our view, she will suffer serious loss and prejudice if ultimately she succeeds in proving her caste claim. At that stage it will be contended by respondents 3 and 4 that there is no place for her. We are of the view that on the basis of the averments in the affidavits of respondents and in the light of opportunity given to the petitioner, it will be in the interest of justice to reinstate her in services of respondents 3 and 4 forthwith. It will be for the respondents 3 and 4 to take such steps as are permissible in law in case petitioner is rendered surplus. It is for the Education Department and the Management to sort out the issue of

petitioner's absorption in services of another aided school. The authorities as well as management cannot deny to the petitioner her just and legitimate claim. No prejudice will be caused to the parties, if petitioner is directed to be reinstated in services of respondents 3 and 4 and at the same time Caste Scrutiny Committee is directed to expedite proceedings before it. In the light of this, following order :-

A) Order dated 24th February 2003 of the Scrutiny Committee (Exhibit-K) is quashed and set aside;

B) Order of respondents 3 and 4 dated 28th March 2003 (Exhibit-N) terminating petitioner from their services is also quashed and set aside;

C) The matter is remitted back to the Scrutiny Committee for fresh consideration of the caste claim of petitioner to "Chamar Scheduled Caste". The scrutiny committee is directed to consider the caste claim afresh and pass appropriate order after giving petitioner opportunity to produce such materials as are permissible in law. The scrutiny committee to decide the caste claim within a period of six months;

D) All contentions on merits of the claim are

expressly kept open. However, scrutiny committee is directed not to deny the petitioner the benefit only because she belongs to "Sikh" religion;

E) Respondents 3 and 4 are directed to reinstate the petitioner in their services forthwith. However, it shall be open for respondents 3 and 4 to take such steps including making necessary applications to respondents 1 and 4 in case petitioner is rendered surplus;

F) Needless to observe that the petitioner shall be entitled to continuity in services. However, there will be no direction to pay back wages;

G) Needless to observe that it will be for respondents 3 and 4 to take such decision as is permissible in law after conclusion of proceedings before scrutiny committee.

13. Petition disposed of with the above directions. There shall be no order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)

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